

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 556 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

S.P. JARIWALA

Versus

MAVJIBHAI MAKENBHAI

Appearance:

MR. P.G. DESAI for Petitioner

MR RR MARSHALL for Respondent No. 1

MR. K.T. DAVE, ADDL. PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 17/06/98

ORAL JUDGEMENT

The appellant-original complainant has challenged validity of order dated 27.5.1987 passed by the Judicial Magistrate (First Class) Municipal Courts, Surat in Municipal Case No. 256/84.

2. A complaint was filed against the accused-present respondent No.1 under provisions of Sections 253, 254 and 256 of the B.P.M.C. Act to the effect that, without obtaining requisite permission, the accused had put up permanent construction within the limits of Surat Municipal Corporation on part of land bearing Survey No. 92 situated at Varachha Road of Fulpada.

3. The Learned Judicial Magistrate, after considering the evidence led before him, was pleased to acquit the accused mainly on the ground that the officer who had issued the show-cause notice was not examined and, therefore, validity of the show-cause notice, in pursuance of which the entire proceedings had been initiated, was not established. Moreover, he came to the conclusion that there was no evidence with regard to illegal construction put up by the accused.

4. I have perused the record and proceedings pertaining to the case and I have also heard learned advocate Shri P.G. Desai for the appellant, learned advocate Shri R.R. Marshall appearing for the accused and learned A.P.P. Shri K.T. Dave for the respondent Government.

5. After hearing the concerned advocates and upon perusal of the relevant documents, it is clear that no witness has ever adduced any evidence to the effect that illegal construction was put up by the accused. There was no personal information to any of the witnesses examined by the complainant to establish that new construction, in violation of the provisions of sections 253, 254 and 256 of the BPMC Act, was put up by the accused. The learned advocate appearing for the complainant could not draw my attention to evidence of any of the witnesses to the above-referred effect. On the other hand, learned advocate Shri Marshall appearing for the accused has supported the judgment whereby the accused has been acquitted. He has specifically drawn my attention to the evidence led by Shri Shashikant (P.W. No. 1-Exh. 3) who in his cross-examination has admitted the fact that he was not having any personal information with regard to the alleged construction and he had also not seen the place where the alleged construction was put up. Moreover, he had also drawn my attention to evidence of Shri Dalpatbhai (P.W. 2, Ex. 20) who was working as supervisor in Surat Municipal Corporation. In his cross-examination he too had admitted that the accused had put up construction long back and there was no evidence to the effect that old construction was demolished and thereafter he had put up new construction

in violation of sections 253, 254 and 256 of the B.P.M.C. Act. He has also admitted the fact that no panchnama was drawn to show that the accused had put up construction in violation of the provisions referred to hereinabove.

6. The trial court has discussed the evidence in detail and has rightly come to the conclusion that no offence was committed by the accused and therefore the accused was rightly acquitted. I am in full agreement with the conclusion arrived at by the trial court and, therefore, the appeal is dismissed with no order as to costs.

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